

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 PEOPLES BANK, et al.,

11 Plaintiffs,

12 v.

13 P/C AMBASSADOR OF THE  
14 LAKE, et al.,

15 Defendants.

CASE NO. C16-1403JLR

ORDER

16 **I. INTRODUCTION**

17 Before the court is Plaintiff Peoples Bank's motion for summary judgment *in rem*  
18 and judgment foreclosing its preferred marine mortgage. (Mot. (Dkt. # 96); *see also*  
19 Reply (Dkt. # 104) (narrowing the requested relief due to factual developments  
20 subsequent to filing the motion).) Defendant Salvatore Ragusa, the former owner of *in*  
21 *rem* Defendant P/C Ambassador of the Lake, opposes in part Peoples Bank's motion  
22 (Resp. (Dkt. # 100)), and Plaintiff-in-Intervention Seattle Mobile Marine, LLC ("SMM")

1 does not oppose the motion (Not. of Non-Opp. (Dkt. # 103)). The court has considered  
2 the motion and related filings, the relevant portions of the record, and the applicable law.  
3 Considering itself fully advised,<sup>1</sup> the court GRANTS Peoples Bank’s motion as narrowed  
4 in its reply brief, and FORECLOSES the preferred marine mortgage on the Ambassador  
5 of the Lake.

## 6 **II. BACKGROUND**

7 This case arises out of several debts Mr. Ragusa owes, at least one of which is  
8 secured by the Ambassador of the Lake. (*See* Peoples Bank Compl. (Dkt. # 1); Loosmore  
9 Decl. (Dkt. # 98) ¶ 2, Ex. 1 (“RFAs”) at 4; Resp. at 2.) Mr. Ragusa has two loans with  
10 Peoples Bank: Loan Number 5045130-601 (“the 601 Loan”) and Loan Number  
11 5045130-602 (“the 602 Loan”). (2d Olson Decl. (Dkt. # 105) ¶ 4.) As of July 25, 2017,  
12 Mr. Ragusa owed Peoples Bank \$130,549.79 on the 601 Loan. (*Id.*) As of June 28,  
13 2017, Mr. Ragusa owed \$25,205.25 on the 602 Loan. (1st Olson Decl. (Dkt. # 97) ¶ 2.)  
14 Mr. Ragusa admits that the Ambassador of the Lake secures the 601 Loan and that he  
15 defaulted on that loan in August 2016. (RFAs at 4; Resp. at 2.) However, Mr. Ragusa  
16 contends that the 602 Loan is unsecured. (RFAs at 6; Resp. at 2-4.)

17 On May 24, 2017, Peoples Bank purchased the Ambassador of the Lake at a  
18 court-ordered interlocutory sale. (Ret. of Svc. re: Marshal’s Sale (Dkt. # 94) at 1; *see*  
19 *also* 4/20/17 Order (Dkt. # 89) (ordering the interlocutory sale of the Ambassador of the  
20 Lake).) Peoples Bank then finalized a sale of the Ambassador of the Lake to a third-party

---

21  
22 <sup>1</sup> No party requests oral argument, and the court concludes oral argument would not aid  
its disposition of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 purchaser. (2d Olson Decl. ¶ 2.) After deducting conservatively estimated costs of  
2 associated repairs and storage, Peoples Bank expects to realize \$123,363.35 from the  
3 sale. (*Id.* ¶ 3.) Peoples Bank now asks the court to enter summary judgment dismissing  
4 Mr. Ragusa’s affirmative defenses and foreclosing its marine mortgage on the  
5 Ambassador of the Lake. (Mot. at 4-10.)

### 6 **III. ANALYSIS**

7 Peoples Bank initially moved for summary judgment *in rem* and foreclosure on the  
8 basis of the 601 Loan and the 602 Loan. (Mot. at 4-5, 9-10.) However, when Peoples  
9 Bank sold the Ambassador of the Lake for a net sum of less than the outstanding balance  
10 on the 601 Loan, Peoples Bank agreed that “the court does not need to decide whether the  
11 602 [L]oan . . . is secured or unsecured” in order to award the relief it seeks. (Reply at 2.)  
12 Peoples Bank also seeks summary judgment on the affirmative defenses of failure to  
13 serve, harassment, unclean hands, and various additional, unspecified affirmative  
14 defenses. (Mot. at 7-8.)

#### 15 **A. Legal Standard**

16 Summary judgment is appropriate if the evidence, when viewed in the light most  
17 favorable to the non-moving party, demonstrates “that there is no genuine dispute as to  
18 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.  
19 P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of*  
20 *L.A.*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of  
21 showing that there is no genuine issue of material fact and that he or she is entitled to  
22 prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her

1 | burden, then the non-moving party “must make a showing sufficient to establish a  
2 | genuine dispute of material fact regarding the existence of the essential elements of his  
3 | case that he must prove at trial” in order to withstand summary judgment. *Galen*, 477  
4 | F.3d at 658. The non-moving party may make this showing by use of affidavits,  
5 | depositions, answers to interrogatories, or requests for admissions. *Anderson v. Liberty*  
6 | *Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court is “required to view the facts and draw  
7 | reasonable inferences in the light most favorable to the [non-moving] party.” *Scott v.*  
8 | *Harris*, 550 U.S. 372, 378 (2007). Only disputes over the facts that might affect the  
9 | outcome of the suit under the governing law are “material” and will properly preclude the  
10 | entry of summary judgment. *Anderson*, 477 U.S. at 248.

#### 11 | **B. Affirmative Defenses**

12 | In his amended answer, Mr. Ragusa asserts the affirmative defenses of improper  
13 | service, harassment, and unclean hands. (*See* Am. Ans. (Dkt. # 22) at 3-4.) He also  
14 | “reserves the right to amend the answer to assert Other [sic] affirmative defenses.” (*Id.* at  
15 | 4.) Peoples Bank seeks summary judgment on all of Mr. Ragusa’s affirmative defenses.  
16 | (Mot. at 7-8.)

17 | Each of Mr. Ragusa’s affirmative defenses fails as a matter of law. Peoples Bank  
18 | properly served Mr. Ragusa. (Proof of Svc. (Dkt. # 56).) There is no suggestion in the  
19 | complaint (*see* Peoples Bank Compl.) or evidence in the record that Peoples Bank filed  
20 | this lawsuit to harass Mr. Ragusa or the Ambassador of the Lake, or that Peoples Bank  
21 | has unclean hands with regard to the subject of this lawsuit (*see* Init. Disclosures (Dkt.  
22 | # 67) (attaching Mr. Ragusa’s initial disclosures, none of which contain any evidence

1 | pertinent to Mr. Ragusa’s affirmative defenses); Vaughn Decl. (Dkt. # 101) (attaching no  
2 | evidence relevant to Mr. Ragusa’s affirmative defenses); Ragusa Decl. (Dkt. # 102)  
3 | (same)). Finally, Mr. Ragusa has not asserted any additional affirmative defenses and,  
4 | after the court denied without prejudice a previous motion for leave to amend his answer  
5 | (*see* 1/25/17 Order (Dkt. # 73)), Mr. Ragusa has not sought the court’s leave to amend his  
6 | answer or to assert additional defenses (*see* Dkt.). Peoples Bank raises all of these  
7 | deficiencies in its motion for summary judgment (Mot. at 7-8), and Mr. Ragusa fails to  
8 | acknowledge the arguments, reference his affirmative defenses, or point to any evidence  
9 | to support any of his affirmative defenses (*see generally* Resp).

10 |       To withstand summary judgment, the party opposing summary judgment “must  
11 | make a showing sufficient to establish a genuine dispute of material fact regarding the  
12 | existence of the essential elements of his case that he must prove at trial.” *Galen*, 477  
13 | F.3d at 658. Because Mr. Ragusa bears the burden of proof on each affirmative defense  
14 | and has placed no facts in the record supporting any of those affirmative defenses, the  
15 | court grants Peoples Bank summary judgment as to all of Mr. Ragusa’s affirmative  
16 | defenses.

### 17 | **C. Foreclosure**

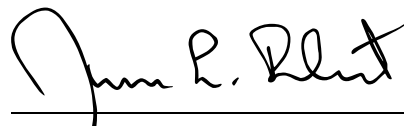
18 |       Regardless of whether the Ambassador of the Lake secures the 602 Loan, Mr.  
19 | Ragusa’s admitted default on the 601 Loan warrants foreclosure. (*See* RFAs at 4  
20 | (admitting that the Ambassador of the Lake secures the 601 Loan).) The outstanding  
21 | balance on the 601 Loan exceeds the net proceeds from the forthcoming sale of the  
22 | Ambassador of the Lake, less repair costs. (*See* 2d Olson Decl. ¶¶ 3-4); *Walter E. Heller*

1 & Co. v. O/S Sonny V., 595 F.2d 968, 972 (5th Cir. 1979) (indicating that the resale price  
2 less the cost of repairs is presumptively the fair market value of property in a preferred  
3 marine foreclosure case). There is no evidence to suggest the sale of the Ambassador of  
4 the Lake was unfair or obtained less than market value. *See Walter E. Heller*, 595 F.2d at  
5 972; (Dkt.). All of the underlying facts are uncontroverted, Mr. Ragusa's argument that  
6 the 602 Loan is unsecured is irrelevant, and Mr. Ragusa makes no argument opposing  
7 foreclosure based on his default on the 601 Loan. (*See Resp.* at 2-4.) Accordingly, the  
8 court grants Peoples Bank summary judgment against the Ambassador of the Lake, her  
9 engines, tackle, apparel, furniture, and equipment, for \$130,549.79.<sup>2</sup>

#### 10 IV. CONCLUSION

11 For the foregoing reasons, the court GRANTS Peoples Bank's motion for  
12 summary judgment (Dkt. # 96), DISMISSES Mr. Ragusa's affirmative defenses, and  
13 FORECLOSES the preferred marine mortgage on the Ambassador of the Lake.

14 Dated this 9th day of August, 2017.

15  
16 

17 JAMES L. ROBART  
18 United States District Judge  
19  
20

---

21 <sup>2</sup> The court defers ruling on whether and to what extent pre- and post-judgment interest  
22 are available because there are extant claims against Mr. Ragusa and Defendant Lana Stewart, *in personam*. (*See generally* Peoples Bank Compl.; SMM Compl. (Dkt. # 39).)